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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

Public Copy

File: EAC 99 130 50106 Office: Vermont Service Center Date:

JUL 25 2001

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: Self-represented

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner seeks classification as an alien with extraordinary ability as a gospel singer. Immigration consultant William C. Ansara, who assisted the petitioner with the preparation of the petition, states that the petitioner "is a world-renowned Brazilian Gospel Singer. [The petitioner] is known and has performed

throughout Brazil and the United States for many years. He has many recordings that reached number one in his native country of Brazil."

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner, in his initial submission, did not specify which of these criteria he claims to have met. On appeal, the petitioner claims to have met all ten of them. For the most part, we will address the initial evidence and subsequent submissions, including the appeal, in the aggregate rather than separately.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Radio Imprensa-Brasilia named the petitioner the Best Male Gospel Vocalist of 1997. Radio Melodia FM named the petitioner's song "Adonai" as the Best Brazilian Gospel Song of 1998. The record does not reflect the prestige which these awards command at a national level.

The petitioner submits a copy of a "Professional Member Entry Form" from the Gospel Music Association, Inc., showing that he nominated himself for a "Dove Award" as the "Male Vocalist of the Year" and his song "You Know" for "Song of the Year." There is no record that he actually won these awards, and the nomination form was not submitted until late 1999; the award covers "recordings released November 1, 1998 through October 31, 1999." Thus, even if the petitioner had shown that he won the award, he could not have won it prior to the petition's March 1999 filing date.

Another award subsequent to the filing date is mentioned in an electronic mail message dated January 5, 2001, offering congratulations because the petitioner's "song has been picked as Song of the Year in Minas Gerais." Apart from the late date of the petitioner's receipt of the award, a congratulatory message from a third party is not documentation of the petitioner's receipt of the award. The record offers nothing to establish the significance of the award.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submits a copy of a membership card from the Gospel Music Association. Subsequently, he asserts on appeal that this association "will automatically waive application process upon association with established U.S. recording label." The record contains no documentation to show the association's membership requirements. If, as the petitioner claims, membership is automatic for any singer with a recording contract, then the association does not fulfill this criterion. A recording contract is not, by itself, an outstanding achievement.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner submits copies of various newspaper and magazine articles. The petitioner does not submit full translations, but rather "summary translations," and there is no evidence regarding the importance or circulation of these publications. The translations identify several of the articles as "advertisements."

In a letter written directly to the petitioner in 1996, country musician Bill Lynn states "I congratulate you on your TV show and the notoriety you are receiving." The letter contains no further information about this television appearance, such as whether it was local or national; whether it was on a major broadcast network or a minor specialty cable channel; or whether it was a full-length program devoted to the petitioner or a short segment in a program featuring other, unrelated stories.

The petitioner submits a photograph of himself in a television studio, which he states is in Paraguay. The photograph shows the petitioner, a camera, a backdrop labeled "TV SIN FRONTERAS," and (presumably out of shot of the television camera) a technician pointing a hand-held microphone at the petitioner.

The petitioner was the subject of articles in Portuguese-language U.S. publications, which limits its circulation to the small segment of the U.S. population that speaks and reads Portuguese. The articles (as well as some articles in local English-language publications) were published in September and October 1999, after the filing of the petition and indeed after the director requested further evidence in late August, 1999. The fact that so many exhibits came into existence within two months of the director's request suggests that some of them may have been created specifically to address that request. The petitioner has not shown that he has been the subject of such media attention at any point before or since the fall of 1999. These publications appear to focus on the northeastern United States and therefore appear to be neither national nor international in scope.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The Massachusetts Alliance of Portuguese Speakers invited the petitioner to perform, and act as a judge, at the "First Anti-Drug Festimjovem (First Music Festival of Portuguese-Speaking Youth)" held in Cambridge, Massachusetts, in November 1998. From the name of the event, it seems fairly clear that participation was limited to Portuguese-speakers in Massachusetts; there is no evidence that the festival was a nationally significant event.

On appeal, the petitioner submits a letter from Mario Nancel of Nancel Produções, who states that the petitioner acted as a judge at a 1996 "contest for Best Performers (including, Best Male, Female and gospel band)." This activity appears to satisfy the criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

On appeal, the petitioner states "[d]ocuments to be submitted will include evidence of the reformation of all traditional rhythms of Brazilian church music. This pioneered the way for the new genre of gospel/pop music." The petitioner has since submitted various new documents, but he has not explained which of these documents purportedly demonstrates that the petitioner effectively established or popularized a new genre of music in Brazil.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner cites his "full-page monthly feature" in Gospel News magazine. The earliest such feature is dated September 1999, and is part of the wave of documentation created just after the director requested further evidence of eligibility. Also, judging from the content of advertisements in the publication, Gospel News appears to be a local, rather than national, publication intended for Portuguese-speaking Baptists in New England. For instance, the publication includes advertisements for Massachusetts restaurants, and restaurants (apart from national chains) tend to advertise locally rather than nationally because it is highly inefficient to pay for national distribution of an advertisement when only a small segment of the population lives within traveling distance of the restaurant.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner cites evidence pertaining to "various concerts with audiences swelling to over 50,000 people." Every singer who performs in public "displays" his or her work in this manner; this criterion is more suited to visual artists whose works are displayed in museums for public viewing (rather than more routine displays to facilitate sales). Concert attendance is covered by a separate criterion, further below.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner, on appeal, refers to "[e]vidence to be submitted indicating position as Musical Director for the Southern Baptist Convention . . . for Musical Crusade of the Millennium." Subsequent evidence shows that the "Musical Crusade" was held in the autumn of 1999, well after the filing date, and it appears to have consisted of local events at New England churches rather than a national event undertaken by the national-level Southern Baptist Convention.

Documents submitted on appeal indicate that the petitioner served as "support staff" for the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992. It is not clear how this work is relevant to the petitioner's acclaim as a singer.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner claims "I have received more compensation through contracts than all other performers." In an electronic mail message, Isaias Kerner, the financial director of NS Records, indicates that the petitioner earned the following royalties (in U.S. dollars):

1996	52,300	1998	47,300
1997	65,500	1999	38,430 (through September)

The record offers no comparative evidence to show that the petitioner is among the highest-paid gospel singers in Brazil or the United States.

Promoter [REDACTED] states that he paid the petitioner \$15,000 for a concert appearance, while "the average fee was \$5,000 US dollars for the performers." The letter refers to a 32-show tour. From the summary translation, it is not clear whether the petitioner received \$15,000 for each of the 32 shows (which would represent \$480,000) or for the entire tour (which would represent less than \$500 per show). Also, we cannot determine whether the

"average" to which Mr. Santos refers is the average for the tour, or throughout the field.

Bookings for late 1999 reflect "1000 US dollars per day" for a twelve-day booking in California, but the record offers no basis for comparison with the top-earning gospel singers in the U.S.

New evidence shows that the petitioner sold his apartment in Brazil for \$70,000 U.S., but the sale of the apartment is irrelevant to the compensation the petitioner receives as an entertainer.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner asserts that one of his albums earned a "double-gold award." The record contains no direct evidence from any certifying authority, nor even a photograph of a gold record or other commemoration. The petitioner submits an electronic mail message from [REDACTED] NS Records, stating "The Best II turned Gold too." The message is dated September 22, 1999, nearly six months after the petition's filing date. Although the message was from a Brazilian record company executive to a native Brazilian singer, the message was transmitted in English for some unexplained reason. The above-mentioned message from [REDACTED] also indicates that the petitioner's album The Best went "gold again" in 1999.

[REDACTED] president of NS Records and Productions, asserts that his company is among "the largest record companies in Brazil" and that the petitioner's albums on the label "are on the top of our sales list." [REDACTED] asserts that the petitioner earns an average of \$3,000 U.S. per month from record sales, and that the petitioner, over the course of his career, "has sung . . . for over 2 million people in Brazil." Other witnesses place the petitioner among the top five or ten singers in Brazil, sometimes but not always limiting the group specifically to gospel singers. The record lacks objective evidence, such as chart figures or audited sales certifications, to support these claims.

The petitioner submits a "summary translation" of an article from an unidentified publication, identified as a "newspaper advertisement." The summary translation indicates that a concert to honor the tenth anniversary of Radio Melodia featured "the nation's most popular musical artists. Of the entire event, [the petitioner] was one of those few who received the greatest and most enduring applause from over fifty-thousand fans in the audience." It is clear that this translation is neither complete nor literal; the original Portuguese text mentions the petitioner (and several other entertainers), and it mentions the attendance figure of "50 mil," but not in the same sentence. The original article mentions

the petitioner's name only twice, once in a list of performers, and once in the caption to an accompanying photograph.

The petitioner submits photographs of various performances, which he states were taken in Brazil and Paraguay. The very fact that he has performed in more than one country does not establish that he has earned acclaim as one of the top figures in his field, nationally or internationally.

The petitioner submits various compact discs, cassettes, and videotapes that he has released. Some of them do not identify any record company at all, suggesting that they are privately-produced. Similarly, the videotape packaging consists of a store-bought Maxell videocassette with labels glued to the outer box and cassette spine.

Beyond the above criteria, the petitioner has submitted a number of witness letters from church officials, promoters, record company officials and the like. For instance, in a joint letter on Radio Melodia FM letterhead, radio personality Gustavo de Moraes and production manager [REDACTED] state that the petitioner "is one of the TOP 10 gospel singers in Brazil." They assert that Radio Melodia is Rio de Janeiro's number one FM radio station, "reaching over a million people per day," and that "many times one of [the petitioner's] songs became the NUMBER ONE of the day. Last year his song ADONAI was the best gospel song of the year, in Brazil."

The petitioner submits itineraries and contracts, showing his commitments booked up to a year in advance. These performances across the United States had not happened yet when the petitioner submitted this evidence; we can infer nothing except that the petitioner is consistently able to secure bookings. We do not infer, simply because the petitioner has performed throughout the United States, that the petitioner is among the best-known figures in his field of music.

Several new letters accompany the appeal. One letter, from [REDACTED] of the Southern Baptist Convention, states that the petitioner should relocate "near the Myrtle Beach, South Carolina area, giving him an excellent opportunity to 'break' into the national music scene." This wording necessarily suggests that the petitioner has not yet made such a "break" at the national level.

There is no reliable evidence that the petitioner has attained national acclaim in the United States. With regard to Brazil, there is no first-hand documentary evidence to support the petitioner's most critical claims. The statute demands "extensive documentation" to establish sustained acclaim, and the petitioner has offered little actual documentation that originates from before the petition's March 1999 filing date.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a gospel singer to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner has been successful in his field, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.